

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LINDSEY R. TOFSRUD, a single person,
Plaintiff,

vs.

JOHN E. POTTER, as Postmaster General
of the United States Postal Service, a federal
governmental entity; and DAVID
KENNEDY and JANE DOE KENNEDY,
individually and as a marital community; and
the UNITED STATE OF AMERICA;
Defendants.

NO. CV-10-90-JLQ

**ORDER GRANTING MOTION TO
SUBSTITUTE PARTY
DEFENDANT ON TORT CLAIMS
ONLY**

BEFORE THE COURT is the Defendants' "Notice of Substitution" (Ct. Rec. 18) docketed and noted for hearing as a "Motion to Substitute Party." Plaintiff has not responded to the motion, and it is therefore deemed unopposed.

Defendants contend that substitution of the United States of America for Defendant David Kennedy is proper in this action pursuant to 28 U.S.C. § 2679(d)(1) (Federal Tort Claims Act), in respect to Plaintiff's tort causes of action alleged in Paragraphs 4.4 (assault/battery) and 4.5 (negligence) of the Amended Complaint. The Notice of Substitution indicates that the United States Attorney for the Eastern District of Washington, James A. McDevitt, has certified that Defendant Kennedy acted "within the course and scope of his federal employment with respect to the conduct which forms the basis of Plaintiff's Amended Complaint." Ct. Rec. 18, Ex. A. 28 U.S.C. § 2679(d)(1) provides that upon such certification, any civil action commenced upon such claim "shall be deemed an action against the United States...and the United States shall be substituted

1 as the party defendant."

2 In accordance with 28 U.S.C. § 2679(d)(1), substitution is warranted as to
3 Plaintiff's Federal Tort Claims Act claims, and Defendants' Motion to Substitute (**Ct.**
4 **Rec. 18**) is **GRANTED** as to those claims only. The Clerk of the court is directed to
5 update the docket sheet in accordance with the Notice of Substitution and this order.
6 The United States is now a named Defendant. The United States replaces Defendant
7 Kennedy only as to Plaintiff's fourth and fifth claims for relief asserted in the Amended
8 Complaint. Accordingly, as Defendant Kennedy is named in other claims, Kennedy shall
9 remain a named Defendant. The parties are directed to change the caption of all future
10 pleadings to reflect the addition of the United States as a party in interest.

11 **IT IS SO ORDERED.** The Clerk is directed to update its records as specified
12 above, enter this order and to provide copies to counsel.

13 DATED this 2nd day of July, 2010.

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15 s/ Justin L. Quackenbush
16 JUSTIN L. QUACKENBUSH
17 SENIOR UNITED STATES DISTRICT JUDGE
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